

TERRY LYNN KING,)	
)	Civil Action No. 3:18-cv-01234
Plaintiff,)	
)	
v.)	<u>CAPITAL CASE</u>
)	
TONY PARKER, et al.,)	Judge William L. Campbell, Jr.
)	
Defendants.)	

Pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, Plaintiff Terry King makes this Motion to Deny or Defer Considering Defendants’ Motion for Summary Judgment. Plaintiff relies on his memorandum in support, the accompanying exhibits, and the Declaration of Sarah B. Miller filed herewith. For the reasons explained in Plaintiff’s memorandum, Defendants’ actions throughout discovery have deprived Plaintiff of the benefit of a full opportunity to conduct discovery, despite his diligent efforts to obtain discovery and uncover the deficiencies in Defendants’ discovery process, the extent of which he only recently learned. Thus, while Plaintiff’s opposition to the MSJ provides amply sufficient reason by itself for the Court to deny Defendants’ summary judgment motion (the “MSJ”) (D.E. 182–84) on its own terms, Plaintiff files *this* motion because Defendants have failed to provide all the discovery to which Plaintiff is entitled and with which Plaintiff could present a more complete opposition to the MSJ.

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and Deputy Commissioner of the Department of Correction, who led Defendants' discovery efforts; (2) electronically stored information identified through search terms directed at obtaining email communications central to Plaintiff's claims, including emails discussing the availability of the alternative methods of execution; and (3) a revised privilege log providing the information required to analyze the assertion of privilege, including what privilege is asserted for each documents and the parties copied on all communications. This information will be essential to Plaintiff's ability to adequately prepare for trial. It would also enable Plaintiff to defend against Defendants' MSJ with the benefit of all discovery to which he is rightfully entitled. Therefore, if the Court declines to deny the MSJ under Rule 56(d), Plaintiff asks in the alternative that the Court defer ruling on the MSJ until Plaintiff can obtain the limited additional discovery he needs to enable him to present the fullest possible opposition to the MSJ either through the process the Magistrate Judge laid out in his latest order on Plaintiff's motion for additional discovery and sanctions (D.E. 198) or by Defendants' compliance with any specific discovery requirements ordered by the Court in response to this Motion.

Dated: April 13, 2022

Respectfully submitted,

/s/ David R. Esquivel

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CERTIFICATE OF SERVICE

I certify that on April 13, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt which includes:

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